



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA-HQ-OPPT-2014-0304; FRL-9920-85]

RIN 2070-AK02

Lead-based Paint Programs; Amendment to Jurisdiction-Specific Certification and Accreditation Requirements and Renovator Refresher Training Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing minor revisions to the Lead Renovation, Repair, and Painting (RRP) rule that published in the **Federal Register** on April 22, 2008, and the Lead-based Paint (LBP) Activities rule that published in the **Federal Register** on August 29, 1996. The proposed revisions are intended to improve the day-to-day function of these programs by reducing burdens to industry and the EPA, and by clarifying language for training providers, while retaining the protections provided by the original rules. EPA is proposing to eliminate the requirement that the renovator refresher training have a hands-on component. The Agency is also proposing to remove jurisdiction-specific certification and accreditation requirements under the LBP Activities program. Currently, this program requires that training providers, firms and individuals seek certification in each jurisdiction (e.g., a State) where the organization or person wants to work. In addition, EPA is adding clarifying language to the requirements for training providers under both the RRP and LBP Activities programs.

DATES: Comments must be received on or before *[insert date 30 days after date of publication in the Federal Register]*.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-

HQ-OPPT-2014-0304, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Marc Edmonds, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0758; email address: edmonds.marc@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, if you are a firm or individual who must be certified to

conduct lead-based paint activities in accordance with 40 CFR 745.226, or if you are an individual who must be certified to conduct renovation activities in accordance with 40 CFR 745.90. This proposed rule applies only in States, territories, and tribal areas that do not have authorized programs pursuant to 40 CFR 745.324. For further information regarding the authorization status of States, territories, and Tribes, contact the National Lead Information Center at 1-800-424-LEAD [5323].

The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Building construction (NAICS code 236), e.g., single-family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS code 531), e.g., lessors of residential buildings and dwellings, residential property managers.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS code 611519), e.g., training providers.
- Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), e.g., dust sampling technicians.
- Lead abatement professionals (NAICS code 562910), e.g., firms and supervisors

engaged in lead-based paint activities.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's Authority for Taking this Action?

This proposed rule is being issued under the authority of sections 402(a) and 402(c)(3) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2682(a) and 2682(c)(3).

C. What Action is the Agency Taking?

EPA is proposing minor revisions to the RRP rule that published in the **Federal Register** on April 22, 2008 (Ref. 1) and the Lead-based Paint Activities rule that published in the **Federal Register** on August 29, 1996 (Ref. 2). EPA is proposing to eliminate the requirement that the renovator refresher training have a hands-on component. The Agency is also proposing to remove jurisdictions under the LBP Activities program. Currently, this program requires that training providers, firms and individuals seek certification in each jurisdiction (e.g., a State) where the organization or person wants to work. In addition, EPA is adding clarifying language to the requirements for training providers under both the RRP and LBP Activities programs.

D. Why is the Agency Taking this Action?

The proposed revisions are intended to improve the day-to-day function of these programs by reducing burdens to industry and the EPA and by clarifying language for training providers, while retaining the benefits of the original rules.

E. What are the Estimated Incremental Impacts of this Action?

EPA has prepared an analysis of the potential costs and impacts associated with this proposed rule. This analysis is summarized in greater detail in the discussion concerning Executive Order 12866 and Executive Order 13563 in Unit V.A. The following is a brief outline of the estimated incremental impacts of this proposed rule.

- *Overall costs.* The annualized cost savings of this proposed rule are estimated at approximately \$9.6 million per year using a 3% discount rate and \$9.8 million per year using a 7% discount rate.

- *Small entity impacts.* The proposed rule would not have a significant impact on a substantial number of small entities. This proposed rule would relieve regulatory burden for affected small entities, and would not have a direct negative impact on any small entities.

- *Effects on State, local, and Tribal governments.* This proposed rule would not have a significant intergovernmental mandate, significant or unique effects on small governments, or have Federalism implications.

F. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

In 1992, Congress found that low-level lead poisoning was widespread among American children, affecting, at that time, as many as 3,000,000 children under age 6; that the ingestion of household dust containing lead from deteriorating or abraded lead-based paint was the most common cause of lead poisoning in children; and that the health and development of children living in as many as 3,800,000 American homes was endangered by chipping or peeling lead paint, or excessive amounts of lead-contaminated dust in their homes. Congress further determined that the prior Federal response to this threat was insufficient and enacted Title X of the Housing and Community Development Act of 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or Title X) (Ref. 3). Title X established a national goal of eliminating lead-based paint hazards in housing as expeditiously as possible and provided a leadership role for the federal government in building the infrastructure necessary to achieve this goal.

Title X amended TSCA to add a new subchapter entitled “Title IV—Lead Exposure

Reduction.” Most of EPA’s responsibilities for addressing lead-based paint hazards can be found in this title, with TSCA section 402 being one source of the rulemaking authority to carry out these responsibilities. Section 402(a) of TSCA directs EPA to promulgate regulations covering lead-based paint activities to ensure persons performing these activities are properly trained, that training programs are accredited, and that contractors performing these activities are certified. Regulations promulgated under TSCA section 402(a) must contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. On August 29, 1996, EPA promulgated final regulations under TSCA section 402(a) that govern lead-based paint inspections, lead hazard screens, risk assessments, and abatements in target housing and child-occupied facilities (also referred to as the LBP Activities regulations) (Ref. 2). The LBP Activities rule, codified at 40 CFR part 745, subpart L, contained an accreditation program for training providers and training, and certification and work practice requirements for lead-based paint inspectors, risk assessors, project designers, abatement supervisors, and abatement workers. Pursuant to TSCA section 404, provisions were made for interested States, territories, and Tribes to apply for and receive authorization to administer their own LBP Activities programs. Requirements applicable to State, territorial, and tribal programs are codified in 40 CFR part 745, subpart Q.

Section 402(c) of TSCA pertains to renovation and remodeling activities. Section 402(c)(3) of TSCA requires EPA to revise the regulations issued under TSCA section 402(a) to apply to renovation or remodeling activities that create lead-based paint hazards. On April 22, 2008, EPA issued a final regulation applying a revised version of the LBP Activities rule requirements to renovation, repair, and painting activities in target housing and child-occupied facilities (Ref. 1). Pursuant to the RRP rule, persons performing covered renovation activities must be properly trained, renovators and renovation firms must be certified, and training

providers must be accredited (Ref. 1). The requirements of the RRP rule became effective in stages with the entire rule becoming effective as of April 22, 2010.

III. Proposed Revisions

A. Hands-on Training

To become certified as a renovator, a person must successfully complete a renovator course accredited by EPA or by a State, territorial, or tribal program authorized by EPA. To gain initial certification, renovators must complete an 8-hour training course. Until October 4, 2011, renovators that successfully completed an EPA, Department of Housing and Urban Development (HUD), or EPA/HUD model renovation training course were able to take the 4-hour refresher renovator training in lieu of the 8-hour initial course. Both of these courses require hands-on training. Trainings are taught either in a classroom or via electronic learning (e-learning). In an e-learning course, students take the lecture portion of the course over the Internet and then travel to a training facility to perform the hands-on activities and take the exam. To maintain certification, renovators must complete a renovator refresher course within 5 years of the date the individual completed their previous renovator training. Renovators who received their initial certification before April 22, 2010, however, have until July 1, 2015, to take the refresher training to maintain certification. If the renovator does not complete the course within the required timeframe, the individual must retake the initial 8-hour course to become certified again.

The 8-hour initial training includes hands-on training in testing for lead in paint, methods for minimizing the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and cleaning verification. Activities covered include the use of EPA-recognized test kits, setting up barriers, covering furniture, ducts, and carpeted floors with plastic, mopping floors, bagging waste, and determining that the work area has been

adequately cleaned. Each student performs these activities in front of an instructor who determines if the student is proficient in each one. Students must be deemed proficient in order to pass the class and become certified. The current version of the renovator refresher course includes hands-on training in testing paint for lead and cleaning verification.

At the time the RRP rule became effective it was important to have hands-on training in the refresher course because certain renovators were eligible to take only the refresher course to receive their initial certification (i.e., renovators who completed a prerequisite training). After October 4, 2011, however, renovators could no longer take the refresher course to gain initial certification even if they were previously eligible to take the refresher course in lieu of the initial course. From that date forward, all renovators taking the refresher course will already have received hands-on training as part of their initial renovator certification (i.e., an initial or refresher course). Now that renovators will take the refresher course only after being initially certified in a way that includes hands-on training, EPA believes it is less important for the refresher course to include hands-on training. In addition, renovators that are seeking recertification have been practicing the hands-on skills on renovation jobs during their 5-year certification. Furthermore, due to the less technical nature of work practices taught in the renovator course versus those taught in the abatement course, EPA believes performing hands-on activities once is sufficient to teach renovators the skills they need to perform renovations following the RRP rule work practices.

In addition, by eliminating this requirement, renovators seeking recertification will be able to take the course entirely online without having to travel to a training location to perform the hands-on activities. This change will make it easier for renovators to take the refresher training, especially renovators who live far from a training facility. Renovators will save time and travel costs by taking the course from a single location, possibly their own home. If taking

the training is made easier, EPA believes that more renovators will take the refresher training and become recertified. Having more renovators take the refresher training will lead to a higher number of certified renovators, resulting in a workforce better able to perform renovations in a lead-safe manner. For these reasons, EPA believes it is appropriate to eliminate the hands-on training in the renovator refresher course. The Agency requests comment on eliminating the requirement to include hands-on training in the renovator refresher course.

While the Agency believes that the hands-on requirement in the renovator refresher course is no longer necessary, it has not ruled out having hands-on activities that are performed via e-learning instead of in person. This would allow instructors to assess the student's skills without having the student travel to a classroom. EPA requests comment on how the hands-on portion of the refresher course could be performed by the student and assessed by the instructor via e-learning.

Another option for maintaining the hands-on requirement in the renovator refresher course is to modify it to make it less burdensome for trainers and students. For example, the requirement could be changed so the hands-on portion of the course is only required every other time a renovator gets recertified instead of every 5 years. Under this scenario, the renovator would only have to take the hands-on training once every 10 years. The Agency requests comment on possible alternative approaches to conducting the hands-on skills to make the training less burdensome.

The Agency does not intend to eliminate the hands-on activities in the refresher courses for the other lead-based paint program disciplines: Risk assessor, inspector, supervisor, abatement worker and dust sampling technician. The work performed by these disciplines involves highly specialized skills which individuals must learn in training courses accredited by EPA or authorized States, territories, and Tribes. For example, a significant portion of an

abatement worker's training is focused on abatement techniques and selection of the appropriate course of action for a variety of hazards. Renovators, on the other hand, do not seek to permanently eliminate lead hazards; instead they perform maintenance and improvement tasks as directed by the consumer. Thus, the goal of EPA's renovator training and certification program is not to update the methodology a renovator uses to accomplish these tasks (i.e., how to be painters, plumbers, or carpenters), but rather to ensure that persons who already know how to perform renovations perform their typical work in a lead-safe manner. Because of the technical nature of the work performed by risk assessors, inspectors, supervisors, abatement workers and dust sampling technicians, the Agency believes that it is important for their refresher training courses to include hands-on learning.

Currently, training providers are required to submit both a pre-training and post-training notification for each course that they teach. Both types of notifications must contain information about the course including, but not limited to, date, time and location. The post-training notification must also include information about the trainees including name, address and test score, among other things. Pre-training notifications must be submitted at least 7 business days prior to the start of the course. Post-training notifications must be submitted no later than 10 business days following course completion. The notification requirements help EPA monitor compliance with the training and certification provisions of the RRP and LBP Activities programs. Training providers that teach online courses must submit pre- and post-training notifications for each hands-on training session they teach. If the Agency eliminates the hands-on requirement for the refresher training then there will be no classroom session for which to notify EPA. Because the training provider will still need to send the names of the students to EPA, the notification requirements will need to be changed. The Agency requests comment on how it should modify the notification requirements to accommodate a training taught entirely online.

In the absence of more particular information regarding the number of renovators that may take an online class to complete the required refresher training, EPA assumes that 98% of renovators will take the online training if the hands-on requirement is removed, based on the significant cost savings that would result from reduced tuition costs and by avoiding the time and associated expenses needed to travel to a training site. EPA requests comment on this assumption. EPA also requests comment and supporting information on the savings that would accrue to renovators if EPA removes the hands-on training requirement for renovator refresher courses; whether the tuition is likely to differ for online and in-person refresher training; and how the costs training providers would incur to offer online refresher training courses compare to the costs of offering courses in person.

The Agency is considering a further modification to the notification requirements regarding online notifications. For years, training providers have had the option of submitting notifications electronically via EPA's Central Data Exchange (CDX); 63% of training providers opted to do so in the past year. The CDX system is designed to streamline the notification process for training providers and EPA alike, and to perform basic validations of electronic submissions that reduce common errors in notifications otherwise submitted on paper. Depending on how the notification requirements are modified, training providers may find it more efficient and less burdensome to submit notifications to EPA electronically if the hands-on refresher training requirement was eliminated. Such a change could result in an increased rate of electronic reporting of training notifications to EPA. To reduce the burden on the Agency and save taxpayer dollars, EPA will consider requiring training providers that teach the online refresher renovator course to submit their notifications for that course online. The Agency requests comment on whether it should require training providers to submit notifications online for the online refresher course.

The Agency is concerned that, by the time a final rule is published, many renovators will have already taken the refresher training that includes the hands-on learning and will have missed out on the burden savings that this proposed rule would provide. In light of this, EPA is considering extending the certifications for a portion of renovators so they would be able to realize the benefits of this proposed rule. For example, the Agency could extend for 6 months the renovator certifications that expire by July 1, 2015. EPA requests comments on whether it should extend the certifications of renovators so they can take advantage of the burden savings of this proposed rule.

B. Jurisdictions

On June 9, 1999, 40 CFR part 745, subpart L, was amended to include a fee schedule for training programs seeking EPA accreditation and for individuals and firms seeking EPA certification (Ref. 4). These fees were established as directed by TSCA section 402(a)(3), which requires EPA to recover the cost of administering and enforcing the lead-based paint activities requirements in States without authorized programs. The fee schedule created a multi-jurisdiction registration fee which applies to individuals, firms and training programs that provide training or perform lead-based paint activities in more than one State administered by the EPA program. This fee is applied per discipline for each additional EPA-administered State in which the applicant seeks certification/recertification or accreditation/reaccreditation. An EPA-administered jurisdiction is either an individual State without an authorized program or all Tribes without authorized programs in a given EPA Region.

The multi-state jurisdiction fee of \$35 was based on the estimated burdens required for Agency clerical, technical, and managerial staff to perform tasks associated with adding jurisdictions to a certification or accreditation. Tasks include entering the information into a database, approving or disapproving the application and generating and mailing a certificate to

the applicant. After years of implementing the LBP Activities program, the Agency believes that separate certifications for each EPA-administered State jurisdiction are not necessary. In particular, EPA does not believe it is necessary for the Agency to certify or accredit the same applicant multiple times; certification in one EPA-administered State jurisdiction should be sufficient to perform work in any other EPA-administered States. For instance, EPA did not include separate certifications for each EPA-administered State in the RRP rule and found that it did not adversely impact the program. In addition, only requiring one certification for all EPA-administered State jurisdictions helps to streamline the certification and accreditation process. Accordingly, the Agency is proposing to eliminate the requirement for separate certifications in each EPA-administered State jurisdiction in the LBP Activities program. If jurisdictions are eliminated, regulated entities will no longer have to send an application and fees to EPA for the purpose of adding additional EPA-administered State jurisdictions to their certification or accreditation. Once a regulated entity applies and is approved in the Lead-based Paint Activities program, they will be able to work in any EPA-administered State. EPA requests comment on whether it should eliminate this requirement from the Lead-based Paint Activities regulations.

Eliminating the fee for adding an EPA-administered State jurisdiction will not cause the other fees under the LBP Activities regulations to increase. As stated earlier, TSCA requires EPA to recover the cost of administering and enforcing the lead-based paint activities requirements. Eliminating the requirement to apply for additional jurisdictions also eliminates the Agency's costs for processing those applications and its need to recover the fee. Thus, eliminating the \$35 fee will not require the Agency to adjust the other fees it collects under the LBP Activities rule.

C. Clarification Regarding Training Provider Application Requirements

EPA is clarifying the application regulations for accredited training providers under the

RRP rule (Ref. 1) and LBP Activities rule (Ref. 2). It was brought to the Agency's attention that the regulations did not specifically state what constituted a violation of the regulations at 40 CFR 745.225. For example, some other regulatory provisions, such as 40 CFR 745.87, specifically list various activities that are considered a violation of TSCA. Accordingly, the Agency is proposing to add clarifying language explaining that training providers must follow the requirements in that section. EPA believes that accredited training providers already understand this, but EPA is proposing to add the clarifying language to ensure understanding of the requirements – similar to what has been done in other regulations. This clarifying language does not change any requirements for accredited training providers. The Agency requests comment on adding this clarification to the regulations at 40 CFR 745.225(a)(4), (c), (d) and (e).

D. Correction to Training Notification Requirements

The regulatory text of the final RRP rule in 2008 (Ref. 1) inadvertently omitted a requirement for accredited providers of renovation training to provide notification to EPA after each training course the provider delivers. The provision was designed to supply important information regarding certified renovators for EPA's compliance monitoring efforts. In 2009, EPA issued a rule (Ref. 5) to correct this omission by amending 40 CFR 745.225(c)(14) to require post-course notifications from accredited providers of renovator or dust sampling technician training. The 2009 rule also included conforming changes to 40 CFR 745.225(c)(14)(iii) to include the correct name of the sample post-course notification form and to make it clear that all methods of post-course notification are available to both renovation training providers and lead-based paint activities training providers. As amended, 40 CFR 745.225(c)(14) required renovation training providers to notify EPA no later than 10 business days following course completion. Although EPA identified this requirement in its cost estimates in 2008, the regulatory provision was subsequently overwritten by another rulemaking. Specifically, in a

2011 rule (Ref. 6), the regulatory language inadvertently removed the regulatory text that was added to 40 CFR 745.225(c)(14)(i) by the 2009 rule. In this proposed rule, EPA is proposing to add the same language back to 40 CFR 745.225(c)(14)(i) that was included in the 2009 rule. EPA requests comment on adding this language back to the notification requirements. Since EPA has continued to account for the costs and paperwork burden associated with this notification provision, this proposed correction does not increase the estimated costs and burdens for the RRP program.

E. Effective Date

EPA is proposing to find under the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), that good cause exists to dispense with the 30-day delay in the effective date of the final rule that EPA intends to promulgate based upon this proposed rule. As stated earlier in this preamble, removing the hands-on requirement will make it easier for renovators to take the refresher training, especially renovators who live far from a training facility. If taking the training is made easier, EPA believes that removing the hands-on requirement will lead to more renovators taking the training and becoming recertified. Consequently, delaying the effective date may result in fewer renovators taking the training and becoming recertified. For this reason, the Agency believes it is in the public interest to remove the requirement as soon as possible. EPA also believes that such action would relieve a restriction in accordance with 5 U.S.C. 553(d)(1). EPA therefore proposes to issue a final rule making this change effective upon publication in the **Federal Register**.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket,

even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Lead; Renovation, Repair, and Painting Program; Final Rule. Federal Register (73 FR 21692, April 22, 2008) (FRL-8355-7).

2. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. Federal Register (61 FR 45778, August 29, 1996) (FRL-5389-9).

3. Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*).

4. Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors; Final Rule. Federal Register (64 FR 31091, June 9, 1999) (FRL-6058-6).

5. Lead; Minor Amendments to the Renovation, Repair, and Painting Program; Final Rule. Federal Register (74 FR 34257, July 15, 2009) (FRL-8422-7).

6. Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program; Final Rule. Federal Register (76 FR 47918, August 5, 2011) (FRL-8881-8).

7. EPA. Economic Analysis for the Lead-Based Paint Program Minor Amendments Proposed Rule (Economic Analysis). December 2014.

8. EPA. Information Collection Request (ICR) for TSCA sections 402 and 404 Training, Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting. EPA ICR No. 2502.01 and OMB No. 2070-[NEW]. December 2014.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed rule has been designated by the Office of Management and Budget (OMB) as a “significant regulatory action” under section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, EPA submitted this action to OMB for review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations are documented in the docket.

EPA has prepared an analysis of the potential cost savings associated with this rulemaking. This analysis is contained in the Economic Analysis for the Lead-Based Paint Program Minor Amendments Proposed Rule (Ref. 7) and is briefly summarized here.

In a typical year, individuals, firms, and training providers apply to perform lead-based paint activities or provide training in a total of 431 additional EPA-administered jurisdictions. Removing the \$35 multi-jurisdiction fee will result in total estimated cost savings of approximately \$15,000 per year to these entities.

Removing the hands-on training requirement for renovator refresher training is estimated to reduce the tuition by an average of \$37. Removing the hands-on requirement also makes online renovator refresher training more attractive to training providers and renovators. If renovators become recertified by taking an e-learning refresher course they are estimated to save an additional \$165 by avoiding the time and associated expenses needed to travel to a training site. Renovator training and certification (which is valid for 5 years) became mandatory in 2010, and a large number of renovators were trained that year. As many as 168,000 of these renovators are predicted to seek refresher training in 2015. Over time, the annual number is predicted to equilibrate such that up to 48,000 renovators may seek refresher training in later years. Nearly all of these renovators are assumed to choose online refresher training if the option is available. Therefore, removing the hands-on requirement for renovator refresher training is estimated to reduce costs by over \$9 million per year.

The proposed rule includes a correction to the training notification requirements to add back regulatory text on post-training notifications that was inadvertently overwritten in a 2011 rule (although most training providers are continuing to provide post-training notifications to EPA in a timely manner). EPA has already accounted for the burden and cost of requiring accredited providers of renovation training to provide notification to EPA after each training course the provider delivers. For example, the currently approved ICR for the TSCA sections 402 and 404 Training, Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting (EPA ICR No. 1715.13, OMB Control No. 2070-0155) estimates that 600 renovation training providers will submit an average of 14 post-training notifications per year. This yields a total of 8,400 post-training notifications per year at an average burden of 1.6 hours per response, resulting in a total burden for this activity of 13,440 hours at a cost of \$339,578. In order to avoid double-counting, EPA's Economic Analysis and ICR for this action do not include the burden and cost of reinstating the post-training notification requirements.

The clarifying language being added to the rule explaining that training providers must follow the regulations does not affect the cost of compliance because it does not change any requirements for accredited training providers.

Removing the multi-jurisdiction fee and the requirement for hands on refresher renovator training is estimated to result in cost savings of up to \$9.6 million per year using a 3% discount rate and \$9.8 million per year using a 7% discount rate.

B. Paperwork Reduction Act (PRA)

The information collection requirements in this proposed rule have been submitted to OMB for review and approval under PRA, 44 U.S.C. 3501 *et seq.* The ICR document prepared by EPA has been assigned EPA ICR No. 2502.01 and the OMB Control No. 2070-[NEW] (Ref.

8). The ICR document provides a detailed presentation of the estimated burden and costs predicted as a result of the proposed rule. Burden is defined at 5 CFR 1320.3(b).

There are 275 training providers accredited to offer renovator refresher training programs. All these training providers are assumed to apply to EPA to become accredited to offer e-learning refresher training once the requirement for hands-on renovator refresher training is removed. The applications must address issues such as how the trainer will ensure that students successfully complete the e-learning modules and the e-learning final assessment. Training providers are most likely to add an already reviewed and accepted e-learning course from another training provider to their training curriculum. In that case, their burden to become familiar with the new rule and to submit an application is estimated to average 13.8 hours per response, at a cost of \$687. For the 275 training providers this results in a total burden of 3,795 hours at a total cost \$188,861.

An agency may not conduct or sponsor, and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number, or is otherwise required to submit the specific information by a statute. The OMB control numbers for EPA's regulations codified in Title 40 of the Code of Federal Regulations (CFR), after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR 9.1.

Submit any comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to both EPA and OMB. For EPA, follow the instructions in **ADDRESSES** at the beginning of this document. For OMB, reference "OMB Desk Officer for EPA" and email your comments to

oira_submission@omb.eop.gov. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after [*insert date of publication in the **Federal Register***], a comment to OMB is best assured of having its full effect if OMB receives it by [*insert date 30 days after publication in the **Federal Register***]. The final rule will address any OMB or public comments received on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 551-553, or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201. The SBA's definitions typically are based upon either a sales or an employment level, depending on the nature of the industry.
2. A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000.
3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small

entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The proposed rule would eliminate multi-jurisdiction registration fees for the LBP Activities program, and eliminate the hands-on training requirement from the lead renovation refresher training course. This results in cost savings for entities that no longer would pay the multi-jurisdiction registration fees and for renovators that would have a less expensive refresher training option available to them. Those training providers that choose to offer e-learning refresher renovator training would incur a cost to apply for accreditation of their e-learning courses. However, it is expected that only training providers that anticipate recovering accreditation costs through tuition charges would opt to apply for the additional accreditation because there is no requirement mandating these firms to offer an e-learning refresher training option under the proposed rule. Therefore, there would be no direct negative cost impacts on small entities as a result of the proposed rule. We have therefore concluded that this proposed rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any Federal mandates under the provisions of Title II of UMRA, 2 U.S.C. 1531-1538, for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of UMRA sections 202 or 205. This action is also not subject to the requirements of UMRA section 203 because it contains no regulatory

requirements that might significantly or uniquely affect small governments. Those training providers (both those in the private sector as well as local or tribal governments) that choose to offer e-learning refresher renovator training would incur a cost to apply for accreditation of their e-learning courses. However, it is expected that only training providers that anticipate recovering accreditation costs through tuition charges would opt to apply for the additional accreditation because there is no requirement mandating these firms to offer an e-learning refresher training option under the proposed rule.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Local governments can serve as training providers, and those training providers that choose to offer e-learning refresher renovator training would incur a cost to apply for accreditation of their e-learning courses. However, it is expected that only training providers that anticipate recovering accreditation costs through tuition charges would opt to apply for the additional accreditation because there is no requirement mandating these firms to offer an e-learning refresher training option under the proposed rule. Thus, Executive Order 13132 does not apply to this action. EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Tribal governments can serve as training providers, and those training providers that choose to offer e-learning refresher renovator training would incur a cost to apply for accreditation of their e-learning courses. However, it is expected that only training

providers that anticipate recovering accreditation costs through tuition charges would opt to apply for the additional accreditation because there is no requirement mandating these firms to offer an e-learning refresher training option under the proposed rule. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866, and because EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045, because it would not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rule is not likely to have any adverse energy effects because it does not require any action related to the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of NTTAA, 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials

specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rule and specifically invites the public to identify additional potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. The proposed rule would remove multi-jurisdiction fees for the LBP Activities program and remove the hands-on requirement for refresher renovator training. However, it would not change the work practice requirements for lead-based paint activities or renovation, repair or painting activities disturbing lead-based paint.

List of Subjects in 40 CFR Part 745

Environmental protection, Lead, Lead-based paint, Renovation.

Dated: January 7, 2015.

Gina McCarthy,
Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 745--[AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681-2692 and 42 U.S.C. 4852d.

2. In § 745.225:

- a. Add new paragraph (a)(4).
- b. Revise the introductory text of paragraphs (c), (d), and (e).
- c. Revise paragraphs (c)(14)(i) and (e)(2) and (3).

The addition and revisions read as follows:

§ 745.225 Accreditation of training programs: target housing and child occupied facilities.

(a) * * *

(4) Accredited training programs, training program managers, and principal instructors must comply with all of the requirements of this section including approved terms of the application and all of the requirements and limitations specified in any accreditation documents issued to training programs.

* * * * *

(c) *Requirements for the accreditation of training programs.* A training program accredited by EPA to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses must meet the following requirements:

* * * * *

(14) * * *

(i) The training manager must provide EPA notification after the completion of any renovator, dust sampling, or lead-based paint activities course. This notification must be received by EPA no later than 10 business days following course completion.

* * * *

(d) *Minimum training curriculum requirements.* A training program accredited by EPA to offer lead-based paint courses in the specific disciplines listed in this paragraph (d) must ensure that its courses of study include, at a minimum, the following course topics.

* * * *

(e) *Requirements for the accreditation of refresher training programs.* A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program accredited by EPA to offer refresher training must meet the following minimum requirements:

* * * *

(2) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all disciplines except renovator and project designer must include a hands-on component.

(3) Except for renovator and project designer courses, for all other courses offered, the training program shall conduct a hands-on assessment. With the exception of project designer courses, the training program shall conduct a course test at the completion of the course.

* * * *

3. In § 745.238:

- a. Remove paragraph (c)(3).
- b. Redesignate paragraphs (c)(4) and (5) as (c)(3) and (4).
- c. Revise the headings for paragraphs (d)(1) and (2).
- d. Revise paragraph (e)(2).

The amendments read as follows:

§ 745.238 Fees for accreditation and certification of lead-based paint activities.

* * * *

(d) * *

(1) *Certification and re-certification* * *

(2) *Accreditation and re-accreditation.* * *

* * *

(e) * *

(2) Submit application and payment in the amount specified in paragraph (c)(3) of this section in accordance with the instructions provided with the application package.

* * *

[FR Doc. 2015-00473 Filed 01/13/2015 at 8:45 am; Publication Date: 01/14/2015]